REMARKS

Claims 1-7 and 14-19 stand rejected based at least upon Love et al. (US Patent Publication No. 2001/0040877). However, the applicants submit that these rejections are not proper since Love et al. corresponds to the publication of the present application. Thus, to the extent that claims stand rejected based on Love et al., the teachings of Love et al. are not applicable to the claim rejections. Therefore, the applicants submit that neither anticipation nor a prima facie case for obviousness has been shown for claims 1-7 and 14-19.

Claims 8 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tiedemann, Jr. et al. (U.S. Patent Number 6,335,922, hereinafter "Tiedemann 922") in view of Mandyam et al. (U.S. Patent Publication Number 2001/0029189, hereinafter "Mandyam"), claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tiedemann 922 in view of Mandyam and further in view of Tiedemann, Jr. et al. (U.S. Patent Number 6,396,867, hereinafter "Tiedemann 867"), claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tiedemann 922 in view of Mandyam and further in view of Olofsson et al. (U.S. Patent Number 6,167,031, hereinafter "Olofsson"). The applicants respectfully disagree with the rejections above and request reconsideration.

Regarding claim 8, the Examiner asserts that Tiedemann 922 teaches claim 8 except for determining a fading metric. For this teaching the Examiner cites Mandyam paragraphs 0017 and 0020. Mandyam paragraph 17 reads (emphasis added):

> [0017]Through operation of an embodiment of the present invention, a manner by which to schedule communication of the burst data pursuant to the burst data service is provided. When communication conditions of the communication channel upon which the burst data is to be communicated are determined to be acceptable, communication of the burst data is permitted. **When, conversely, the communication conditions are determined to exhibit excessive levels of fading, communication of the data is delayed until communication conditions return to acceptable levels.** Power control commands, generated to effectuate closed loop power control pursuant to separate communications by way of a dedicated air interface link, are monitored. The power control commands provide an indication of channel conditions, and the burst data is

permitted to be communicated if the channel conditions are determined to be acceptable.

Mandyam paragraphs 19 and 20 read (emphasis added):

> [0019]While the power control commands are conventionally used at the sending station to increase, or decrease power levels of communication signals subsequently to be generated by the sending station, the power control commands are also an indication of the channel conditions of the communication channel upon which the communications are effectuated. An embodiment of the present invention monitors the power control commands provided to the sending station pursuant to effectuation of the first communication service. Responsive to the monitored power control commands, a determination is made of the communication channel conditions. If the communication channel conditions are determined to be at least an acceptable level, burst data is permitted to be communicated upon the communication channel pursuant to the burst data service.
>
> [0020]In another aspect of the present invention, the power control commands are monitored during a selected time period. Responsive to the monitoring of values of the power control commands during the selected time periods, permission is selectably granted to transmit the burst data pursuant to the burst data service. When the power control commands are of binary values, i.e., of values corresponding either to a power-up command or a power-down command, a summation of the values is performed during the selected time period. The result summation of values of the power control commands provide an indication of whether channel conditions pursuant to which a first communication service is effectuated exhibit significant levels of **fading**. If significant levels of **fading** are exhibited upon the communication channel, more power-up commands are generated than power-down commands. Conversely, if channels conditions exhibit only low levels of **fading**, greater numbers of power-down commands than power-up down commands are generated. The summed value is compared with a **threshold value. Responsive to the comparison, permission to communicate the data burst pursuant to the burst data service is either permitted or denied**. Subsequent summations and comparisons are made during successive time periods to permit, or prevent, the communication of the data bursts responsive to determination of the channel conditions of the communication channel.

Thus, Mandyam discusses channel fading with respect to some acceptable threshold level for the purpose of determining whether or not to transmit a data burst. However, claim 8 recites (emphasis added) "**selecting, based on the fading metric and the priority metric**, a mobile unit from the plurality of mobile units that require data transmission." **Both** a fading metric and a priority metric are used **to select a mobile** for transmission.

Neither Tiedemann 922 nor Mandyam teach selecting a mobile unit for data

transmission based on a fading metric and a priority metric. Mandyam teaches determining whether fading on a **channel** is excessive or not before transmitting, NOT **which mobile** should be **selected** for transmission. Therefore, the combination of Tiedemann 922 and Mandyam would involve selecting a mobile for transmission based on a priority metric and then determining whether fading on a **channel** is excessive or not before transmitting. However, the applicants assert that the combination of Tiedemann 922 and Mandyam would not teach "**selecting, based on the fading metric and the priority metric**, a mobile unit from the plurality of mobile units that require data transmission," as claim 8 recites.

Regarding claim 9, the Examiner asserts that Tiedemann 867 teaches that the fading metric is based on a voltage gain setting of a forward dedicated channel, citing column 4, lines 41-54. Tiedemann 867 column 4, lines 41-54 read (emphasis added):

> The present invention is a novel and improved method and apparatus for high rate forward link power control. The present invention improves the response time of the forward link power control loop and allows for dynamic adjustment of the transmission power on the forward link by measuring the quality of the reverse link power control bits which are transmitted on the forward traffic channel at multiple times within a frame. Measurements over short time intervals allow **the base station to dynamically adjust the transmission power** to minimize interference to other base stations and maximize the forward link capacity. The improved response time allows the power control loop to effectively compensate for slow fading. For fast fading, the block interleaver in the communication system is effective.

Thus, Tiedemann 867 teaches adjusting the forward link gain based on the quality of the reverse link power control bits. In Tiedemann 867, the mobile measures the reverse channel power control feedback bits, sent on the forward channel, to determine what feedback the mobile should send as forward channel power control feedback bits on the reverse channel. In contrast, taken together claims 8 and 9 recite **selecting a mobile unit** for data transmission **based on the fading metric** (which is based on a voltage gain setting of a forward dedicated channel) **and the priority metric**. Thus, claim 9 describes the use of a voltage gain setting for **selecting a mobile unit** for data transmission, not using the quality of the reverse link power control bits for adjusting the

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forward link gain. Therefore, the applicants submit that Tiedemann 867 does not teach or suggest the language of claim 9.

Since none of the references cited, either Independently or in combination, teach all of the limitations of independent claims 1, 5 or 8, or therefore, all the limitations of their respective dependent claims, the applicants assert that neither anticipation nor a prima facie case for obviousness has been shown. No remaining grounds for rejection or objection being given, the applicant now respectfully submits that the claims in their present form are patentable over the prior art of record, and are in condition for allowance. As a result, allowance and issuance of this case is earnestly solicited.

The Examiner is invited to contact the undersigned, if such communication would advance the prosecution of the present application. Lastly, please charge any additional fees (including extension of time fees) or credit overpayment to Deposit Account No. **502117 -- Motorola, Inc.**

Respectfully submitted,
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